

Amendment No. 1 to SB2729

Bell

Signature of Sponsor

AMEND Senate Bill No. 2729

House Bill No. 2711*

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Section 37-5-501(b), is amended by adding the following as a new subdivision:

() "Nontraditional child care agency" means a child care agency that provides residential child care for one (1) or more children that must be transported across state lines to enter or leave the agency's care and whose transport across state lines is not subject to the Interstate Compact on Juveniles, compiled in chapter 4, part 1 of this title or the Interstate Compact on the Placement of Children, compiled in chapter 4, part 2 of this title;

SECTION 2. Tennessee Code Annotated, Section 37-5-502(a)(1), is amended by adding the following as a new sentence:

This section does not apply to a nontraditional child care agency. An applicant for a nontraditional child care agency shall comply with § 37-5-520.

SECTION 3. Tennessee Code Annotated, Section 37-5-513(a), is amended by designating the existing language as subdivision (a)(1) and adding the following:

(2) It is the duty of the department, through its duly authorized agents, to inspect, at least twice per year, without previous notice, all nontraditional child care agencies or suspected nontraditional child care agencies.

SECTION 4. Tennessee Code Annotated, Section 37-5-518, is amended by adding the following as a new subsection:

(c) Each nontraditional child care agency shall include in its annual report to the department:

- (1) The number of children who have been under the agency's care during the license period;
- (2) The number of children adopted or for whom care has been transferred to an individual or entity during the license period;
- (3) The state and county where the children were adopted or transferred;
- (4) The average length of stay of the children with the agency; and
- (5) The amount in grants and public funds received by the agency from federal, state, and local governments.

SECTION 5. Tennessee Code Annotated, Section 37-5-519, is amended by deleting the section and substituting:

(a) The department shall prepare a comprehensive annual report of the status of child care agencies within the state subject to its jurisdiction, accompanied by special comments and recommendations, and the department shall publish the report on the department's website for the public in conjunction with the department's annual report required by § 37-5-105(4).

(b) By March 1 of each year, the department shall make a presentation of the report to the appropriate committees of the senate and the house of representatives, as determined by each respective speaker.

(c) The presentation shall describe, at a minimum, the information described in § 37-5-518(c).

SECTION 6. Tennessee Code Annotated, Title 37, Chapter 5, Part 5, is amended by adding the following as new sections:

37-5-520. Licensing for nontraditional child care agencies.

(a)

(1) An individual or entity operating a nontraditional child care agency that serves or intends to serve children must be licensed by the department as provided by this section.

(2)

(A) The department may issue rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 2, for the licensing of individuals or entities subject to this part and the enforcement of appropriate standards for the health, safety, and welfare of children under the care or supervision of those individuals or entities.

(B) The rules of the department that are in effect on July 1, 2000, remain in effect until modified by regulatory action of the department to the extent the rules are not inconsistent with this part.

(3) The department shall develop the rules for nontraditional child care agencies, and shall base the continued approval of the licensing of a nontraditional child care agency, upon the following criteria:

(A) The safety, welfare, and best interests of the children in the care of the agency;

(B) The capability, training, and character of the individuals providing or supervising the care to the children;

(C) The quality of the methods of care and instruction provided for the children;

(D) The suitability of the facilities provided for the care of the children;

(E) The adequacy of the methods of administration and the management of the nontraditional child care agency, the agency's personnel policies, and the financing of the agency; and

(F) The present need for the nontraditional child care agency.

(b)

(1) The department shall provide reasonable assistance to applicants or licensees in meeting the child care standards of the department, unless the circumstances demonstrate that further assistance is not compatible with the continued safety, health, or welfare of the children in the agency's care, and that regulatory action affecting the agency's license is warranted. Costs and expenses arising from or related to meeting the child care standards of the department are borne entirely by the applicant or licensee.

(2) If a licensee is denied the renewal of an existing license or an existing license is revoked, or if an applicant for a license cannot meet the standards, then the department shall assist in planning for the placement of the children in licensed nontraditional child care agencies, or other suitable care, return them to their own homes, or make other plans as are necessary and advisable to meet the particular needs of the children involved.

(c) Application for a license to operate a nontraditional child care agency must be made in writing to the department in a manner as the department determines and must be accompanied by the appropriate fee set forth in subsection (f).

(d)

(1)

(A)

(i) Except as provided in subdivision (d)(1)(A)(ii), the department shall issue a temporary license to an applicant for a nontraditional child care agency license that is not the renewal of

an existing license if the department determines that the applicant has presented satisfactory evidence that:

(a) The facility that is proposed for the care of children:

(1) Complies with local and state building, fire, environmental, health, and safety laws and regulations; and

(2) Includes separate sleeping quarters for children of different genders;

(b) The applicant and the personnel who will care for the children are capable to care for the children;

(c) The applicant has the ability and intent to comply with the licensing law and rules; and

(d) The applicant has obtained liability insurance of no less than two million dollars (\$2,000,000).

(ii) The department shall not issue a temporary license for nontraditional child care agencies that federal law or regulations prohibit the department from licensing until all necessary licensing requirements are met.

(B) If the department determines that the conditions of the nontraditional child care agency license applicant's facility, its methods of care, or other circumstances warrant, then the department may issue a restricted license that limits the agency's authority in one (1) or more areas of operation.

(2) The purpose of the temporary license is to permit the nontraditional child care agency license applicant to demonstrate to the department that it has

complied with all licensing laws and rules applicable to its classification prior to the issuance of an initial annual license.

(3) Within ninety (90) days of the issuance of the temporary license, the department shall determine if the applicant has complied with all licensing laws and rules governing the nontraditional child care agency for which the application was made.

(4)

(A) If the department determines that the applicant has complied with all licensing laws and rules for the nontraditional child care agency for which the application was made, then the department shall issue an annual license.

(B) If the department determines that the conditions of the applicant's facility, its methods of care, or other circumstances warrant, then the department may issue a restricted license that limits the agency's authority in one (1) or more areas of operation.

(5)

(A) In granting a license, the department may limit the total number of children who may be enrolled in the nontraditional child care agency regardless of whether the agency may have the physical capacity to care for more children.

(B) The department shall not approve a license for a nontraditional child care agency to provide care for more than twenty-five (25) children during the license period that must be transported across state lines to enter the agency's care and whose transport across state lines is not subject to the Interstate Compact for Juveniles, compiled in chapter 4, part 1 of this title or the Interstate Compact on the Placement of Children, compiled in chapter 4, part 2 of this title.

(6) The licensee shall post the license in a clearly visible location as determined by the department so that persons visiting the agency can readily view the license.

(7) If the department fails to issue or deny an annual license within ninety (90) days of the granting of the temporary license, then the temporary license remains in effect, unless suspended, as provided in § 37-5-514, until a determination is made. If an annual license is denied following the issuance of a temporary license, and if a timely appeal is made of the denial of the annual license, then the temporary license remains in effect, unless suspended, until the board of review renders a decision regarding the denial of the annual license.

(8) If a temporary or annual license is denied, or an annual license is restricted, then the applicant may appeal the denial or restriction as provided in § 37-5-514.

(e)

(1) Except as provided in this section, a license for a nontraditional child care agency is not transferable, and the transfer by sale or lease, or other manner, of the operation of the agency to another individual or entity voids the existing license immediately and a pending appeal involving the status of the license, and the agency is required to close immediately. If the transferee has made application for, and is granted, a temporary license, then the agency may continue operation under the direction of the new licensee. The new licensee in such circumstances must not be the transferor or an individual or entity acting on behalf of the transferor.

(2) If the department determines that an individual or entity has transferred nominal control of an agency to individuals or entities who are determined by the department to be acting on behalf of the purported transferor in order to circumvent a history of violations of the licensing law or rules or to

otherwise attempt to circumvent the licensing law or rules or prior licensing actions instituted by the department, then the department may deny the issuance of a license to the applicant. The applicant may appeal the denial of the license as provided in § 37-5-514.

(3)

(A) The department shall not void the license of an agency, nor void a pending appeal, pursuant to this subsection (e) solely for the reason that the agency is subject to judicial orders directing the transfer of control or management of a child care agency or its license to a receiver, trustee, administrator, or executor of an estate, or a similarly situated individual or entity.

(B) If the current licensee dies, and provided that no licensing violations require the suspension, denial, or revocation of the agency's license, then the department may grant family members of the licensee, or administrators or executors of the licensee, a temporary license to continue operation for a period of ninety (90) days. At the end of the ninety-day period, the department shall determine whether an annual or extended license should be granted to a new licensee as otherwise provided in this section.

(C) This subsection (e) does not prevent the department from taking regulatory or judicial action as may be required pursuant to the licensing laws and rules that may be necessary to protect the children in the care of the agency.

(f) A nontraditional child care agency shall pay an application fee of twenty-five dollars (\$25.00). Additionally, the agency shall pay a fee of one hundred dollars (\$100) per child that the agency is licensed to care for during the licensure period.

(g) Licensure application and renewal fees collected by the department pursuant to this section must be paid into the general fund, but be earmarked for and dedicated to the department. The department shall use the earmarked fees exclusively to improve child care quality in this state by funding activities that include, but are not limited to, child care provider training activities, but excluding costs associated with conducting criminal background checks.

(h)

(1) Notwithstanding title 13, chapter 7 to the contrary, upon adoption of a resolution by two-thirds (2/3) vote of the county legislative body, a zoning authority, in determining the suitability of a request for a use of property for the establishment or alteration of a nontraditional child care agency, may consider the criminal background of the persons or person making the request or the criminal background of the persons or person who will manage or operate the nontraditional child care agency. The authority may require the person to submit a fingerprint sample and a criminal history disclosure form. A criminal history records check conducted under this subdivision (h)(1) must be conducted by the Tennessee bureau of investigation or the federal bureau of investigation, or both, and the results of the check must be forwarded to the authority.

(2) The authority shall maintain the confidentiality of all criminal history records information received pursuant to this subsection (h).

(3) The zoning authority is responsible for all costs associated with obtaining the criminal background information.

(i) On or after July 1, 2022, an applicant seeking a license, including renewal of an existing license, must:

(1) Demonstrate compliance with the evidentiary requirements in subdivision (d)(1)(A)(i);

(2) Provide information regarding other entities operated by the applicant;
and

(3) Disclose all contracts and agreements, including contract or agreement amendments, with third parties through which the applicant intends to provide placement, housing, or care services for children in this state.

37-5-521. Cause of action.

(a) A child has a cause of action against a nontraditional child care agency that authorizes an individual to be present on the premises of the child care agency and the authorized individual inflicts abuse, neglect, or sexual abuse upon the child.

(b) The attorney general and reporter may bring an action under this section on behalf of a child described in subsection (a) and may seek damages for the benefit of the child as permitted by law.

37-5-522. Procedures for children not subject to the Interstate Compact on the Placement of Children.

(a) Within seventy-two (72) hours of beginning to provide care for a child who was transported across state lines to enter the agency's care and whose transport across state lines was not subject to the Interstate Compact for Juveniles, compiled in chapter 4, part 1 of this title or the Interstate Compact on the Placement of Children, compiled in chapter 4, part 2 of this title, a nontraditional child care agency shall:

(1) Prepare a file containing minimal identification requirements of the child. The file must contain, at a minimum, the child's:

- (A) Name;
- (B) Sex;
- (C) Height and weight;
- (D) Verifiable identifiers, if any;
- (E) Fingerprint sample;
- (F) Dental record or copy of the child's birth certificate;

(G) Immunization record;

(H) Photograph; and

(I) List of relatives, if known, and their contact information; and

(2) Submit a copy of the file to the department in a form deemed appropriate by the department by rule.

(b) At least ten (10) business days prior to the transport of a child as described in subsection (a) from the care of the agency to the care of an individual or entity, the nontraditional child care agency shall:

(1) Notify the department that the child will be transported; and

(2) Provide the department with identifying information as deemed appropriate by the department by rule.

(c) The department shall maintain the information described in subsections (a) and (b) in a database. The department shall provide access to the database to law enforcement and other individuals and entities as deemed appropriate by the department by rule and in accordance with all applicable law.

(d) If the department determines that a nontraditional child care agency has violated subsection (a) or (b), then the department may revoke the agency's license in accordance with this part.

37-5-523. Information sharing with state board of education.

The department shall notify the state board of education within three (3) business days of issuance of a license to a facility that intends to provide care, or provides care, to children who are transported across state lines to enter the facility's care and whose transport across state lines is not subject to the Interstate Compact for Juveniles, compiled in chapter 4, part 1 of this title or the Interstate Compact on the Placement of Children, compiled in chapter 4, part 2 of this title.

SECTION 7. Tennessee Code Annotated, Section 49-1-302(i)(1), is amended by adding the following as a new subdivision:

(G) Child care provided in facilities licensed by the department of children's services pursuant to title 37, chapter 5, part 5, to children who are transported across state lines to enter the facility's care and whose transport across state lines is not subject to the Interstate Compact for Juveniles, compiled in title 37, chapter 4, part 1 or the Interstate Compact on the Placement of Children, compiled in title 37, chapter 4, part 2.

SECTION 8. Tennessee Code Annotated, Section 49-1-302(i), is amended by adding the following as a new subdivision:

(5) The board, through the state department of education, shall ensure that educational services provided in facilities as described in subdivision (i)(1)(G) meet all attendance and academic requirements applicable to children enrolled in a public school serving any of the grades kindergarten through twelve (K-12), as provided in this title and pursuant to applicable rules promulgated pursuant to this title.

SECTION 9. Tennessee Code Annotated, Section 37-5-502(i), is amended by deleting the subsection and substituting:

(1) Notwithstanding title 13, chapter 7 to the contrary, upon adoption of a resolution by two-thirds (2/3) vote of the county legislative body, a zoning authority, in determining the suitability of a request for a use of property for the establishment or alteration of a child care agency, may consider the criminal background of the persons or person making the request or the criminal background of the persons or person who will manage or operate the child care agency. The authority may require the person to submit a fingerprint sample and a criminal history disclosure form. A criminal history records check conducted under this subdivision (i)(1) must be conducted by the Tennessee bureau of investigation or the federal bureau of investigation, or both, and the results of the check must be forwarded to the authority.

(2) The authority shall maintain the confidentiality of all criminal history records information received pursuant to this subsection (i).

(3) The zoning authority is responsible for all costs associated with obtaining the criminal background information.

SECTION 10. The department of children's services, the state board of education, and the department of education are authorized to promulgate rules to effectuate the purposes of this act. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 11. If a provision of this act or its application to a person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 12. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 13. For purposes of establishing the database described in § 37-5-522(c) in SECTION 6 and promulgating rules to effectuate this act, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect July 1, 2022, at 12:02 a.m., the public welfare requiring it.